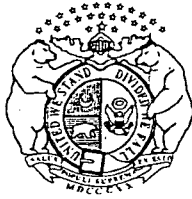


Before the
Administrative Hearing Commission
State of Missouri



STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

vs.)

FORREST BRAACK,)

Respondent.)

No. 02-1902 PS

CONSENT ORDER

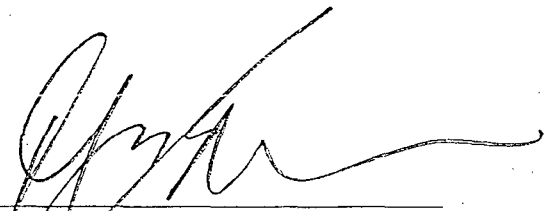
The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On July 31, 2003, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists and Disciplinary Order With Joint Proposed Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 337.035.2(2), (4), (5), (13) and (15), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3. RSMo 2000. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on August 4, 2003.


CHRISTOPHER GRAHAM
Commissioner

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED
JUL 31 2003
ADMINISTRATIVE HEARING
COMMISSION

STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

v.)

FORREST BRAACK,)

Respondent.)

No. 02-1902 PS

JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF
FACTS, WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE
HEARING COMMISSION AND STATE COMMITTEE OF
PSYCHOLOGISTS AND DISCIPLINARY ORDER WITH
JOINT PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-3.440(3)) and pursuant to the terms of § 536.060, RSMo 2000, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 2000, Forrest Braack ("Respondent") and the State Committee of Psychologists ("Committee") hereby waive the right to a hearing of the above-styled case before the Administrative Hearing Commission and, additionally, the right to a disciplinary hearing before the Committee pursuant to § 621.110, RSMo, and jointly stipulate to the facts and consent to the imposition of disciplinary action against the psychologist license of Respondent for violations of statutes and lawful rules and regulations set forth below.

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the Committee in this case, and the parties submit to the jurisdiction of the Administrative Hearing Commission.

Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Disciplinary Order with Joint Proposed Findings of Fact and Conclusions of Law ("Joint Stipulation") and agrees to abide by the terms of this document as they pertain to Respondent.

I

Based upon the foregoing, Petitioner and Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

1. Petitioner, the State Committee of Psychologists ("the Committee"), is an agency of the state of Missouri created and established by § 337.050, RSMo 2000, for the purpose of administering and enforcing the provisions of Chapter 337, RSMo, relating to psychologists.
2. Respondent, Forrest Braack ("Respondent"), is licensed by the Committee as a psychologist, license No. R0267. Respondent's license was issued on November 7, 1990.
3. Respondent's license remained current and active until January 31, 2001, when said license lapsed because of licensee's failure to timely renew.
4. On or about October 9, 1996, in Pulaski County, Missouri, Respondent, for the purpose of obtaining money and property by means of false and fraudulent pretenses and representations, did submit and cause to be submitted to Medicare, a health care benefits program, affecting commerce, in connection with the delivery of and payment for health care benefits, items and services, claims for payment as if he had in fact personally provided the

various psychological services, when in truth and fact, as Respondent knew, he had not performed any or all of the services for which reimbursement was claimed.

5. On or about February 3, 1997, in Pulaski County, Missouri, Respondent, for the purpose of obtaining money and property by means of false and fraudulent pretenses and representations, did submit and cause to be submitted to CHAMPUS, a health care benefits program, affecting commerce, in connection with the delivery of and payment for health care benefits, items and services, claims for payment as if he had in fact personally provided the various psychological services, when in truth and fact, as Respondent knew, he had not performed any or all of the services for which reimbursement was claimed.

6. The beneficiary who was falsely claimed to have received the services from Respondent as referred to in paragraphs 4 and 5 above was not in the state of Missouri at the time of the false rendition of psychological services alleged herein.

7. Between approximately June 23, 1996, through October 5, 1997, in Pulaski County, Missouri, Respondent aided and abetted by persons known and unknown, knowingly and willfully, caused to be made and made applications for payment under a state health care program, that is claims for payment to the fiscal agent for the Division of Medical Services of the Department of Social Services of the state of Missouri under the Medicaid Program for psychological care of Medicaid recipients at home on Sunday, well knowing at the time that the statements and representations of material fact in such claims for payment were false

in that the Respondent did not provide such psychological care for which a claim for payment for psychological care was made by the Respondent to the Missouri Medicaid Program.

8. Each Sunday in the time period referred to in paragraph 7 above, Respondent caused the Missouri Medicaid program to be billed for services he did not render. No services were rendered by anyone, licensed or unlicensed, for the services charged.

9. On or about November 1, 2001, Respondent entered a plea of guilty in the United States District Court for the Western District of Missouri, Southern Division, Case No. 00-03086-01-CR-S-3, to two counts of health care fraud in violation of 18 U.S.C. § 1347.

10. On or about November 1, 2001, Respondent entered a plea of guilty in the United States District Court for the Western District of Missouri, Southern Division, Case No. 00-03086-01-CR-S-3, to one count of Medicaid fraud in violation of 42 U.S.C. § 1320a-7b(a)(1).

11. Health care fraud and Medicaid fraud are offenses reasonably related to the functions and duties of a licensed psychologist.

12. Health care fraud and Medicaid fraud are offenses of which fraud and dishonesty are essential elements.

13. Health care fraud and Medicaid fraud are offenses involving moral turpitude.

14. Respondent obtained fees from the third-party payors by fraud, misrepresentation, and dishonesty.

15. Respondent used fraud, misrepresentation, and dishonesty in the performance of his functions and duties as a licensed psychologist.

16. Respondent had a relationship of professional trust and confidence with the third-party payors in that the third-party payors relied on Respondent to follow the laws and standards of practice relating to the practice of psychology.

17. Respondent violated the professional trust and confidence placed in him by the third-party payors.

18. Respondent's conduct was unethical as defined in the "Ethical Rules of Conduct" adopted by the Committee.

JOINT PROPOSED CONCLUSIONS OF LAW

19. Respondent's conduct as alleged herein violates 4 CSR 235-5.030(9) of the Ethical Rules of Conduct of the State Committee of Psychologists, which states in relevant part: "(B)4. The psychologist shall not bill for services that are not rendered. . . ."

20. Respondent's conduct as alleged herein violates 4 CSR 235-5.030(11) of the Ethical Rules of Conduct of the State Committee of Psychologists, which states in relevant part: "(B) Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception . . . in billing clients or third-party payors, in providing psychological service, . . . or in conducting any other activity related to the practice of psychology."

21. Cause exists to discipline Respondent's license to practice psychology pursuant to § 337.035, RSMo 2000, which states in relevant part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

.....

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

.....

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

.....

(13) Violation of any professional trust or confidence;

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

22. Respondent's conduct violated § 337.035.2(2), (4), (5), (13), and (15), RSMo 2000.

II

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of § 621.110, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

1. Respondent's license as a psychologist is hereby REVOKED. Respondent shall return all copies and originals of Respondent's psychologist license, wall hanging, and wallet certificate to the State Committee of Psychologists on or before the effective date of this revocation.

2. The parties to this Joint Stipulation understand that the State Committee of Psychologists will maintain this Joint Stipulation as an open and public record of the Committee as provided in Chapters 610 and 620, RSMo.

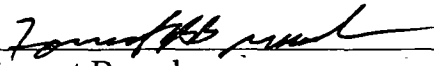
3. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated,

except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

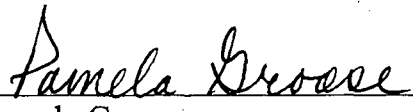
4. Respondent hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation or any portion thereof void or unenforceable.

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Disciplinary Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by Petitioner in the above-styled action.

RESPONDENT


Forrest Braack


PETITIONER


Pamela Groose
Executive Director
State Committee of Psychologists

Date July 22, 2003

Date July 30, 2003

JEREMIAH W. (JAY) NIXON
Attorney General


Ronald Q. Smith
Assistant Attorney General
Missouri Bar No. 51195

7th Floor, Broadway State Office Building
221 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-5406
Telefax: 573-751-5660

Attorneys for Petitioner